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From:

Sent: Monday, March 01, 2010 9:53:02 AM

To:

Cc:

Subject: RE: General question regarding international student taxes

Nonresident alien students who are temporarily in the United States are generally here under F, J, M, or Q visas. Under section 3121(b)(18), wages paid to these students are exempt from FICA. It sounds like some employers are choosing to withhold and pay FICA on these wages anyway, and they do not want to file claims for refund for either the employer or the employee share. I'm not sure there is anything the IRS can do about this. The only response I can think of is to tell the employees that they can seek a refund of the employee share. I realize that the person asking the question is complaining that this process has mixed results (it takes a long time, and sometimes refunds are never paid). I'm not sure that we can do anything about this either. It may be that these employers are just not sure about the status of the employees (the type of visa they have, whether they claim resident status on their income tax returns, etc.), and are paying FICA in an overabundance of caution. It may also be that it is more cost effective for the employer to treat all employees the same way (withhold and pay FICA across the board), than to establish special procedures for nonresident aliens.

As far as the income tax withholding problem is concerned, we have put out special new withholding tables recently for nonresident aliens. They are on page 70 in Publication 15, Circular E (Employer's Tax Guide). We needed to put out these tables because nonresident aliens are not eligible for the Making Work Pay Credit. These tables are supposed to take care of the underwithholding problem for nonresident aliens. They were first published only a couple of months ago, so the person asking these questions may not be aware of them.

We also recently came out with a special set of instructions for nonresident aliens to use in filling out their Forms W-4. These are set forth in Notice 1392, which is available on the IRS website. Notice 1392 just came out in December of 2009, so the person asking these questions may not be aware of it either.

As far as responding to the person asking these questions, I suggest forwarding both Notice 1392, and the latest version of Publication 15, and I would point them to the new withholding tables specially designed for nonresident aliens on page 70.

Hope this is helpful.